

## **I.C.A.R. 47. Criminal History Checks**

Idaho Court Administrative Rule 47. Criminal History Checks.

This rule applies to persons applying to be included in the roster of Parenting Coordinators pursuant to Rule 16(l), I.R.C.P., to persons seeking appointment as supervised access providers pursuant to Rule 16(o) I.R.C.P., to family court services coordinators, to domestic violence court coordinators, to persons seeking to be placed on the roster of evaluators of domestic assault or battery pursuant to Rule 33.3 I.C.R., to guardian ad litem program directors and to staff members and volunteers of guardian ad litem programs. The criminal history check will consist of a self-declaration, fingerprints of the individual, information obtained from the Federal Bureau of Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification and the Sexual Offender Registry, and as required by statute or rule the statewide child abuse registry and adult protection registry. A record of all criminal history background checks shall be maintained in the office of the Supreme Court with a copy going to the applicant in accord with subsection (f) of this rule. A criminal history background check conducted pursuant to this rule and maintained in the office of the Supreme Court, may be used for any position identified under this rule including parenting coordinators, supervised access providers, family court services coordinators, guardian ad litem program directors and staff and volunteers of guardian ad litem programs so long as the fingerprints of the applicant have been submitted and the criminal history check has been conducted within the preceding twelve months.

(a) Self-declaration. Individuals who are subject to a criminal history check shall complete a self-declaration form signed under penalty of perjury that contains the name, address and date of birth which appears on a valid identification document issued by a governmental entity. The self-declaration is the individual's request for the criminal history check to be done and authorizes the Supreme Court to obtain information and release it as required without liability. The applicant shall disclose any conviction or pending indictment for crimes and to furnish a description of the crime and the particulars and any other information as required. The Supreme Court, through its administrative offices, shall complete the criminal history check and inform the individual of the results.

(b) Updating criminal history checks. Every individual subject to this rule shall complete an updated criminal history check at least every five (5) years. An updated criminal history check shall include a self-declaration form, state and local checks, and child and adult protection checks. The Supreme Court or any appointing court may, at its discretion, require a criminal history check or updated criminal history check of any individual subject to this rule at any other time. Five (5) years will be calculated from the date of the individual's most recent Criminal History Check letter of approval.

(c) Designated crimes resulting in an unconditional denial.

1. Individuals subject to this rule shall not be eligible to serve if they have pled guilty or been found guilty one (1) or more of the designated crimes listed below, or their equivalent under the laws of any other jurisdiction, regardless the form of the judgment or withheld judgment.

2. Designated Crimes. No exemption shall be granted for any of the following designated crimes:

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- a. Armed Robbery, as defined by Section 18-6501, Idaho Code;
- b. Arson, as defined by Sections 18-801 through 18-805, Idaho Code;
- c. Crimes against nature, as defined by Section 18-6605, Idaho Code;d. Forcible sexual penetration by use of a foreign object, as defined by Section 18-6608, Idaho Code;
- e. Incest, as defined by Section 18-6602, Idaho Code;
- f. Injury to a child, felony or misdemeanor, as defined by Section 18-1501, Idaho Code;
- g. Kidnapping, as defined by Sections 18-4501 through 18-4503, Idaho Code;
- h. Lewd conduct with a minor, as defined by Section 18-1508, Idaho Code;
- i. Mayhem, as defined by Section 18-5001, Idaho Code;
- j. Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony, as defined by Sections 18-4001, 18-4003, 18-4006, 18-4015, 18-909 and 18-911, Idaho Code;
- k. Poisoning, as defined by Sections 18-4014 and 18-5501, Idaho Code;
- l. A felony involving a controlled substance, where the judgment or withheld judgment was entered within seven (7) years preceding the denial;
- m. Possession of sexually exploitative material, as defined by Section 18-1507A, Idaho Code;
- n. Rape or male rape, as defined by Sections 18-6101 and 18-6108, Idaho Code;
- o. Felony stalking, as defined by Section 18-7905, Idaho Code;

p. Sale or barter of a child, as defined by Section 18-1511, Idaho Code;

q. Sexual abuse or exploitation of a child, as defined by Sections 18-1506 and 18-1507, Idaho Code;

r. Any felony punishable by death or life imprisonment;

s. Any felony involving any type or degree of embezzlement, fraud, theft or burglary, where the judgment or withheld judgment was entered within seven (7) years preceding the denial.

t. Abuse, neglect, exploitation or abandoning of a vulnerable adult, as defined by Sections 18-1505 and 18-1505A, Idaho Code; or

u. Attempt, solicitation or conspiracy to commit any of the designated crimes.

(d) Conditional denials. Except with respect to any crime which results in an unconditional denial under subsection (c) of this rule, the Administrative Director of the Courts may conditionally deny an individual's application, if the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, (excluding traffic violations which do not result in a suspension of the individual's driver's license), the individual has been found to have committed abuse or neglect in a child protection or adult protection case, or the individual appears on either the child abuse registry or the adult protection registry. The Administrative Director may also conditionally deny an application if the results of the criminal history check reveal that the individual has falsified or omitted information on the self-declaration form. A conditional denial becomes a final unconditional denial within twenty-one (21) days from the date of the conditional denial notice unless, prior to the expiration of this period, the individual requests an exemption review which shall be conducted as provided in subsection (e) of this rule. The twenty-one (21) day period for filing a request for an exemption review may be extended by the Administrative Director for good cause.

(e) Exemption reviews. If an exemption review is requested in accordance with subsection (d) of this rule, the Administrative Director of the Courts shall initiate an exemption review in regard to any cause, action or crime for which a conditional denial was issued under subsection (d) of this rule. As determined by the Administrative Director, the review may consist of a review of the documents and supplemental information provided by the individual, a telephonic interview with the individual, an in person review hearing or any other review of the individual's criminal history. The Administrative Director may appoint a subcommittee from the Idaho Supreme Court's Children and Families In the Courts Committee and/or the Child Protection Act Committee to conduct any exemption review provided for under subsection (e) of this rule. Exemption reviews shall be governed by and conducted as follows.

1. Scheduling An Exemption Review. Upon receipt of the request for an exemption review, the Administrative Director shall determine the type of review to be conducted. If an in-person review hearing is not scheduled, one of the other types of review enumerated above shall be conducted

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within fifteen (15) business days from the receipt of the request. If an in-person review hearing is scheduled, the hearing shall be held within fifteen (15) business days from the receipt of the request and the applicant shall be provided with at least seven (7) days notice of the hearing date.

2. Factors To Be Considered. During the review, the following factors shall be considered:

- a. The severity or nature of the crime or other findings;
- b. The period of time since the incident(s) under current review;
- c. The number and pattern of incident(s);
- d. Circumstances surrounding the incident(s) that would help determine the risk of repetition;
- e. Activities since the incident(s) such as continuous employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of rehabilitation;
- f. Granting of a pardon by the Governor or the President; and
- g. The falsification or omission of information on the self-declaration form and other supplemental forms submitted.
- h. The relationship between the crime or finding and the position sought.
- i. Any other factor deemed relevant by the exemption review subcommittee.

3. Decision After Review. A notice of decision shall be issued within fifteen (15) business days of the date of review.

(f) Criminal history records. Criminal history checks done pursuant to this rule become the property of the Supreme Court and shall be held confidential subject to the provisions of Rule 32, I.C.A.R.

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1. Release Of Criminal History Checks. A copy of the criminal history check shall be released:

a. To the individual named in the criminal history upon receipt of a written request to the Supreme Court, provided the individual also releases the state from all liability; or

b. In response to a subpoena issued by a court of competent jurisdiction.

2. Release Of Information Obtained Through A Criminal History Check. Information may be released, upon written request or upon signed release by the individual who is the subject of the criminal history check, to:

a. any judge considering appointment of the subject individual; and

b. as otherwise required by law.

3. Retention Of Records. The criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Supreme Court for a period of not less than six (6) years after the criminal background check is completed.

4. Use And Dissemination Restrictions For FBI Criminal Identification Records. According to the provisions set for in 28 CFR 50.12, the Supreme Court shall:

a. Notify the applicant or individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI;

b. In determining the suitability for licensing or employment, provide the applicant or individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record;

c. Afford the applicant or individual fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and

d. Advise the applicant or individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are set forth in 28 CFR 16.34.

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(g) Confidentiality. Before any information obtained in a criminal history check may be released to the person who is the subject of the record, to another governmental agency, or to a private individual or organization, the Supreme Court will comply with federal Public Law 103-209 and 92-544.

(Adopted July 1, 2002, effective July 1, 2002; amended September 13, 2004, effective October 1, 2004; amended March 24, 2005, effective July 1, 2005; amended April 26, 2007, effective July 1, 2007; amended March 10, 2008, effective March 10, 2008; amended March 24, 2009, effective March 24, 2009 amended September 4, 2009, effective September 4, 2009)

**Source URL:** <http://www.isc.idaho.gov/icar47>